

IN SENATE
OF
THE UNITED STATES,

MARCH 3, 1818.

The Committee of Claims, to whom has been referred the memorial of certain merchans of Portsmouth, in New Hampshire, and its vicinity; the memorial of merchants, underwriters, and insurance companies, of Philadelphia; the petition and memorial of merchants and underwriters of Baltimore; and the memorial and petition of merchants and underwriters, citizens of the United States, of Charleston, South Carolina,

REPORT:

That the petitioners and memorialist state they suffered under unjust and illegal captures and condemnations of their vessels and merchandise, by the cruisers and admiralty courts of France, from the early part of the year '93 to the year 1800. These losses are alleged to have arisen out of a "series of decrees of France and her colonial authorities, violating the plainest principles of the law of nations, and treaties then existing with the United States." The disputes which grew up between the two nations, during the period above referred to, terminated in the convention concluded at Paris, Sept. 30th, 1800. The second article of that convention, deferred negotiation, in regard to the complaints of the two governments, respecting the non-fulfilment of treaty stipulations, and upon the indemnities mutually due or claimed by the parties. This article was disagreed to by the Senate, and the convention so amended, was at last mutually ratified, with the provision, "that the two states should renounce the respective pretensions, which was the object of that article." The memorialists contend, their just claim to indemnity on the French government, has been thus wholly extinguished; and they further contend, that the abrogation of inconvenient treaties, was had in consequence of the surrender of their claim.

It was the duty of this government, to use its efforts for the reclamation of the property its citizens thus alleged to have been unjustly taken from them, by the cruisers of other nations. This duty appears to have been fulfilled. The article of the convention above referred to, deferred negotiation to an indefinite period, on the points it embraced, during which time the former treaties and conventions were to have no operation. This was in effect, a renunciation of these claims, so far as negotiation was concerned.

The subsequent modification suggested by France, produced no essential change in the instrument as ratified by the Senate, and even as it

was at first negotiated. It is not intended by the memorialists, that they hold the government originally obligated to indemnify them for these losses, still less then is it liable to do so, after the most earnest efforts have been made for their relief through negotiation.

A long course of collisions had previously to the arrangement of 1800, brought the two nations to a state of hostilities, which precluded the possibility of a return to the observance of former stipulations, nor to peace without the intervention of new negotiation. Former treaties were conclusively abrogated, and their disputes had become matter of adjustment in the will of the two parties under the then existing circumstances. It was for them to determine anew on what ground the future intercourse of the two communities should rest.

A recovery of these claims before the ordinary tribunals of France, was out of the question, nor does it seem reasonable their private application to the government would have been more available. They could only have hoped indemnity through the mean of public negotiation. It is evident the evils of war were removed by the convention of 1800, and all that could be obtained for the claims in question, was the deferment of their settlement to a convenient time; but the second article which the Senate struck out, related to disputes arising out of the former treaties, *and upon indemnities mutually due or claimed.* The 4th and 5th articles recognizes certain species of claims, with the positive and express exclusion of indemnities *on account of confiscations and captures*; so that the ratification of the 4th and 5th articles, was a disclosure of the temper of France and the United States, which clearly evinces how little value there would have been in the suppression of the second article, without the condition of renunciation.

In the 4th article of a convention made with France in 1803, it is expressly agreed, that the preceding articles of said convention, which relates to indemnities, "shall comprehend no debts, but such as are due to citizens of the United States, who have been, and are yet, creditors of France, for supplies for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the period fixed by the convention of 1800." The 5th article of the convention of 1803, particularly defines the claims allowable, and adds, "that prizes, whose condemnation has been or shall be confirmed, are not to be comprehended in its provisions, and it is expressly understood, that the benefit of reclamation is not extended to American citizens, who have established houses in France or England, or other countries than the United States, in partnership with foreigners, and all agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of said convention, saving to such persons their claims in like manner as if this treaty had not been made." A careful consideration of these provisions, not only show how effectually government has pursued negotiation for those indemnities, but that the outstanding or unsatisfied claims, were then excluded from difficulties intrinsically belonging to them, which time has not lessened. It would be much more difficult for the United States at this time, to discriminate as to the real character of the property for which indemnity is claimed, and whether its confiscation was just or not, than it would have been for France at that time. The committee cannot discover any original obliga-

tion on the United States to pay those claims, and they think it would be more unreasonable to infer obligation, when their nature has been found to preclude their recovery by negotiation. To them, it appears the government has performed its duty with fidelity and diligence, and that the alleged liability of it to pay on the ground of its having renounced its pretensions to recover those claims is of no validity. No details have been laid before the committee, nor even an estimate of the amount claimed. From the number and character of the memorialists, it may fairly be presumed to be very considerable. This is not offered as a reason for the disallowance of the claim, but as one why its merits ought to be well investigated. The claims heretofore allowed by treaty presents proof that those now made are of more doubtful justice. The committee have thought it unnecessary to decide on the question of the alleged illegality of the captures and confiscations of which the memorialists complain. It is obvious, however, that France was not the only belligerent that prayed upon neutral commerce during the late European wars, or under whose piratical depredations our citizens have suffered during that period. England and her allies made the first attempts to violate the law of nations, as reference to the President's message to Congress, of the 23d December, 1808, will prove. France soon fell in with their course of wrong, and in the sequel, even minor states emulated their more powerful neighbors in the career of iniquity. From which of them have your citizens obtained redress? and if you allow this claim, which on the catalogue will not impose on you as strong or stronger obligations to make reimbursements? Where are the reclamations for the 1000 ships plundered from your people under the British orders. Our country has fought hard, it is true, and conquered a glorious peace, and will it be said that the government, in the failure to recover indemnity for this plunder, purchased it at the expense of the sufferers? Certainly not. Such reasoning, however, would be about as pertinent as that offered by the memorialists.

This claim is in part made by underwriters, and even insurance companies; their pretensions are certainly weaker than the bona fide claimant of the vessels and merchandise. While the committee entertain the utmost respect for the memorialists, and they hope, duly estimate the feelings of men who have suffered so severely under losses arising out of a spirit of wanton injustice, they indulge the remark, that lapse of time has softened the features of the original grievance, while it has made it more difficult to adjust the claim, if it was right to undertake it. Individual ruin was often consequent on these alleged illegal captures and condemnations, but much of the injury was incurred under a knowledge of the risk, and in the main the commerce of the country flourished. Speaking the same language with one of the belligerents, it is fairly presumable a portion of the losses in question was connected with foreign interest, at all times difficult to detect, not less so from lapse of time. Indeed this seems to have been a cause for the withholding payment by France of these claims in part.

The memorialists suggest they have, for reasons arising out of the state of the country, forborne hitherto to bring their claim into the view of Congress, but now that the state of the Treasury is capable of affording ample means for doing justice to all the citizens, they have been led to ask relief. For this patriotic forbearance the claimants are entitled to

due credit, but the committee are not aware that this ought to have any weight in deciding on the claim. It certainly does not relax the obligations of Congress to observe as strict and just an application of the public moneys as if the Treasury was not so well supplied. The committee take occasion to remark, that when the amount of the ultimate engagements of the government are duly weighed, there will be found abundant cause for care and economy in the disbursement of the public moneys. From a full consideration of this case, the committee respectfully submit the following resolution:

Resolved, That the relief asked by the memorialists and petitioners ought not to be granted.